

The EPA Acting Administrator Bob Perciasepe, signed the following reconsideration and proposed rule on 3/15/13, and EPA is submitting it for publication in the *Federal Register* (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of public comment. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's FDsys website (<http://fdsys.gpo.gov/fdsys/search/home.action>) and on Regulations.gov (<http://www.regulations.gov>) in Docket No. EPA-R09-OAR-2013-0148. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2013-0148; FRL-]

Approval and Promulgation of Air Quality Implementation Plans;

Nevada; Regional Haze Federal Implementation Plan;

Reconsideration of BART Compliance Date for Reid Gardner

Generating Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule; Notice of Reconsideration of Final Rule.

SUMMARY: EPA is granting reconsideration of the compliance date for the Best Available Retrofit Technology (BART) emission limits for oxides of nitrogen (NO_x) at the Reid Gardner Generating Station (RGGS) promulgated in a Federal Implementation Plan (FIP) on August 23, 2012. EPA is also proposing to extend the compliance date for the NO_x emission limits applicable to Units 1, 2, and 3 at RGGS by 18 months from January 1, 2015, to June 30, 2016. We seek comment only on the aspects of the FIP specifically identified in this notice. We are not opening for reconsideration any other provisions of our FIP for RGGS or our partial approval of the Nevada Regional Haze SIP.

DATES: Comments must be submitted no later than [*insert date 60 days from date of publication in Federal Register*].

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2013-0148, by one of the following methods:

(1) Federal eRulemaking Portal: www.regulations.gov. Follow the on-line instructions.

(2) E-mail: r9_airplanning@epa.gov.

(3) Mail or deliver: Anita Lee (Air-2), U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and

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cannot contact you for clarification, EPA may not be able to consider your comment.

Hearings: EPA intends to hold one or more public hearings to accept oral and written comments on the proposed rulemaking. EPA will provide notice and additional details related to the hearings in the Federal Register, on our website, and in the docket.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While documents in the docket are listed in the index, some information may be publicly available only at EPA Region 9 (e.g., maps, voluminous reports, copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Anita Lee, EPA Region 9, (415) 972-3958, r9_airplanning@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we", "us", and "our" refer to EPA.

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I. Background

A. Summary of Relevant EPA Actions

On December 13, 2011, EPA signed a final rule approving all aspects of the Nevada Regional Haze SIP except for the state's BART determination for reducing NO_x emissions at RGGS.¹ Due to delays associated with publication of this final rule in the **Federal Register**, the rule was not published until March 26, 2012.² However, an unofficial copy of the final rule was provided to all interested parties soon after signature.

On March 22, 2012, the state of Nevada indicated by letter that it intended to submit a SIP revision to EPA in September 2012, including provisions to reduce the emission limit for Unit 3 at RGGS from 0.28 pounds of NO_x per million British thermal units (lb/MMBtu) to 0.20 lb/MMBtu and to require installation of controls on or before June 30, 2016.³

¹ The Regional Haze Rule (RHR), BART, and the Nevada Regional Haze SIP are described elsewhere in greater detail. See, for example, EPA's proposed approval of the Nevada Regional Haze SIP on June 22, 2011 (76 FR 36450).

² 77 FR 17334.

³ See letter dated March 22, 2012 from Michael Elges, Deputy Administrator of the Nevada Division of Environmental Protection, to Deborah Jordan, Director of the Air Division at

On April 12, 2012, EPA proposed to partially approve and partially disapprove the remaining portion of the Nevada Regional Haze SIP, i.e., Nevada's BART determination for reducing NO_x emissions at RGGS.⁴ EPA proposed approval of the NO_x emission limit of 0.20 lb/MMBtu for Units 1 and 2. Because the state's intended SIP revision to reduce the emission limit for Unit 3 had not yet been submitted to EPA, we proposed, among other things, disapproval of the NO_x emission limit of 0.28 lb/MMBtu for Unit 3. EPA concurrently proposed a FIP, generally consistent with the state's intentions, including an emission limit for Unit 3 of 0.20 lb/MMBtu. EPA's proposed FIP included a provision requiring compliance with the BART emission limits within five years from promulgation of the final rule. EPA held two public hearings on May 3, 2012 to take comment on our proposed FIP. The comment period closed on June 4, 2012.

On August 23, 2012, EPA promulgated our final rule to approve in part, disapprove in part, and implement a FIP for the disapproved portions of the Nevada BART determination for RGGS.⁵ The preamble to the final rule discusses in more detail our final action and the comments we received during the comment period for our proposal. Based on comments from EarthJustice,

EPA Region 9, re: Proposed Amendment to Nevada's 2009 Regional Haze State Implementation Plan.

⁴ 77 FR 21896.

⁵ 77 FR 50936.

representing a consortium of eight non-governmental organizations, that a 5-year compliance timeframe to meet the NO_x emission limit of 0.20 lb/MMBtu was excessive,⁶ EPA reevaluated the compliance date for our final rulemaking. Notwithstanding an inaccurate statement in section I of the preamble to our final rule,⁷ EPA noted in section II.K of the preamble that our March 26, 2012 approval of the portions of the Nevada Regional Haze SIP included the portion of the Nevada Administrative Code (NAC 445B.22096(2)(a)) requiring compliance with BART emission limits on three power plants, including RGGS, "[o]n or before January 1, 2015; or (2) [n]ot later than 5 years after approval of Nevada's state implementation plan for regional haze by the United States Environmental Protection Agency Region 9, whichever comes first."⁸ Therefore, consistent with the compliance dates in the Nevada Regional Haze SIP that EPA

⁶ See letter dated June 4, 2012 from Suma Peesapati, EarthJustice, to Thomas Webb, EPA Region 9, re: Approval and Promulgation of Air Quality Implementation Plans; State of Nevada; Regional Haze State Implementation Plan (Docket ID No. EPA-R09-OAR-2011-0130).

⁷ In section I of the preamble to the final rule, EPA incorrectly stated that we did not take action on the schedules for compliance for RGGS in our March 26, 2012 final rulemaking. See 77 FR 50936 (August 23, 2012).

⁸ EPA's final rulemaking on March 26, 2012 approved portions of the NAC, including "445B.22096, excluding the NO_x emission limits and control types in sub-paragraph (1)(c)." See Table 1 in 40 CFR 52.1470(c).

approved on March 26, 2012, EPA finalized a compliance date in the FIP of January 1, 2015.⁹

B. Petition for Reconsideration

On October 19, 2012, Nevada Energy (NV Energy, also known as Nevada Power Company) filed a petition to the Administrator for reconsideration of our August 23, 2012, final rule pursuant to section 307(d)(7)(B) of the CAA.¹⁰ The petition addresses one issue and requests that EPA reconsider the compliance date of January 1, 2015, for meeting the final NO_x emission limits of 0.20 lb/MMBtu on Units 1, 2 and 3 at RGGS. NV Energy asserts that (1) EPA erroneously adopted a January 1, 2015, deadline for Reid Gardner Generating Station, (2) EPA's decision to set the January 1, 2015, compliance date without having proposed it deprived NV Energy of the ability to comment on a shorter compliance period, and (3) EPA's adoption of the January 1, 2015, compliance date was arbitrary and capricious because EPA

⁹ On October 11, 2012, the Nevada State Environmental Commission adopted a revised regulation from the Nevada Division of Environmental Protection that, among other things, extended the compliance date for achieving BART emission limits for NO_x at RGGS from January 1, 2015 to June 30, 2016. See information available at http://www.sec.nv.gov/main/hearing_1012.htm

¹⁰ See letter dated October 19, 2012 from Samuel Boxerman, Sidley Austin LLP representing Nevada Energy, to Lisa P. Jackson, Administrator, US EPA, re: Petition for Reconsideration of EPA's Final Rule entitled, "Approval and Promulgation of Air Quality Implementation Plans; Nevada; Regional Haze State and Federal Implementation Plans; BART Determination for Reid Gardner Generating Station."

failed to consider the impact of administrative delays in issuing the final rule before setting the compliance deadline.

C. Supplemental Information

In a letter dated January 31, 2013, NV Energy submitted supplemental information to EPA describing the steps necessary to comply with the BART emission limits for NO_x on Units 1, 2 and 3 at RGGS, including required regulatory approvals, design, procurement, construction, commissioning, and testing of the new air pollution controls that NV Energy would need to install to comply with BART.¹¹ Based on the amount of time required for the necessary steps, NV Energy states that the January 1, 2015 deadline originally included in the Nevada Regional Haze SIP, and finalized in EPA's FIP for RGGS, is not achievable, but demonstrates that the affected units at RGGS could meet the BART emission limits for NO_x by June 30, 2016, based on an expeditious and compressed schedule for compliance.

II. EPA's Proposed Action

In today's action, EPA is granting reconsideration of the compliance date in our FIP for achieving the NO_x emission limits at RGGS and proposing to extend the compliance date by 18 months

¹¹ See letter dated January 31, 2013 from Starla Lacy, Executive, Environmental, Health, and Safety at NV Energy to Anita Lee, US EPA Region 9, re: Nevada Regional Haze State Implementation Plan, Compliance Deadline for Units 1, 2, & 3 at Reid Gardner Generating Station.

from January 1, 2015, to June 30, 2016. EPA is granting reconsideration of the compliance date based on one of the arguments provided by NV Energy in the October 19, 2012, petition for reconsideration. Specifically, EPA agrees that NV Energy may not have had an adequate opportunity to comment on the final compliance date for the NO_x emission limits because we had proposed a 5-year period for compliance. Therefore, EPA is granting the petition for reconsideration from NV Energy.

EPA is proposing to extend the compliance date based on our review of the supplemental information NV Energy provided to EPA by letter dated January 31, 2013. The information NV Energy submitted justifies our proposed finding that compliance by January 2015 is not achievable, and we are proposing to extend the compliance date for meeting the NO_x emission limits on Units 1, 2 and 3 at RGGS to June 30, 2016.

A. Justification for Proposing to Extend Compliance Date

In its letter dated January 31, 2013, NV Energy sets forth its plans to install multiple control technologies to meet emission limits for NO_x established as BART. NV Energy will install new advanced low-NO_x burners coupled with over fire air (LNB/OFA), new selective non-catalytic reduction (SNCR) systems, and a new neural network control system, as well as modify the existing burner management system and combustion control system (BMS/CCS). NV Energy has contracted with Sargent and Lundy

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(S&L), an engineering firm, to develop and manage the installation of this BART air pollution control project to reduce emissions of NO_x at RGGGS.

This project, as documented in a Gantt chart created by S&L and submitted to EPA by NV Energy, requires detailed engineering, procurement, construction, commissioning, tuning, and testing of the new control technologies, as well as regulatory approvals from the Nevada Public Utilities Commission and Nevada Division of Environmental Protection (NDEP).

NV Energy states that, if all necessary activities were conducted in sequence, final installation and operation of the new air pollution controls would require 77 months (over six years); however, NV Energy and S&L have developed a compressed 42-month (three and one-half year) schedule set forth in the Gantt chart in order to complete the project by June 30, 2016. In its letter, NV Energy states that as of December 31, 2012, it has invested \$1.9 million on the project for engineering and design, and intends to initiate engineering and procurement of the LNB/OFA in early 2013.

The LNB/OFA combustion controls reduce the amount of NO_x formed during combustion by controlling the airflow and

temperature during combustion.¹² As such, the design of LNB/OFA must occur before the design of the SNCR, a post-combustion control that requires detailed fluid dynamic modeling of combustion to ensure that the placement of nozzles to inject the ammonia or urea occurs at the most appropriate locations (where the flue gas is within a prescribed temperature range) to optimize emission reductions of NO_x.¹³

NV Energy further states that modifications to the existing BMS/CCS first require a completed design for the LNB/OFA, and the specifications for the neural network require knowledge of what modifications will be made to the existing BMS/CCS. This information means that, although some tasks can be conducted simultaneously, many tasks are dependent on the completion of other tasks and must be staged sequentially.

The information provided by NV Energy shows that the design, procurement, and fabrication of the multiple air pollution controls are scheduled to occur from 2013 through 2015. Construction of controls on Units 1, 2 and 3 is scheduled to be staged over 2015 and 2016, including three to six months of pre-outage construction for each unit, two-month outages for

¹² See, for example, EPA's Technical Bulletin on NO_x formation and control, available at <http://www.epa.gov/ttn/catc/dir1/fnoxdoc.pdf>.

¹³ *Id.*

each unit, four-month periods for tuning, and one-month periods for testing for each of the three units.

In total, NV Energy expects to complete the installation of all air pollution controls to meet the BART limits in 42 months, an average of 14 months per unit. The Institute of Clean Air Companies estimates that the installation of SNCR typically requires 10 to 13 months, and typical deployment of LNB requires six to eight months.¹⁴ The combination of LNB and SNCR may then be expected to require 16 to 21 months. Based on the schedule provided by NV Energy and the anticipated timeframe requiring an average of 14 months per unit for the design, procurement, construction, commissioning, and testing of LNB/OFA, SNCR, a neural network, and modifications to the BMS/CCS, EPA considers the 42-month schedule for RGGS to comply with the BART limits for NO_x to be as expeditious as practicable, and a deadline of January 1, 2015 to be not practically achievable.¹⁵ Therefore, EPA is proposing to extend the compliance timeframe for compliance with the NO_x limits of 0.20 lb/MMBtu at RGGS by 18 months, from January 1, 2015, to June 30, 2016.

¹⁴ Institute of Clean Air Companies, *Typical Installation Timelines for NO_x Emissions Control technologies on Industrial Sources*, December 4, 2006.

¹⁵ Pursuant to CAA sections 169A(b)(2)(A and (g)(4), sources must procure, install, and operate BART as expeditiously as practicable, but in no event later than five years after the date of approval of a SIP or promulgation of a FIP.

C. Compliance Date Extension Does Not Interfere with Attainment or Reasonable Further Progress

The CAA requires that any revision to an implementation plan shall not be approved by the Administrator "if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress . . . or any other applicable requirement of [the CAA]."¹⁶

EPA has promulgated health-based standards, known as the national ambient air quality standards (NAAQS), for seven pollutants, including NO₂, a component of NO_x, and pollutants such as ozone and particulate matter with a diameter less than or equal to 2.5 micrometers (PM_{2.5}), that are formed in the atmosphere from reactions between NO_x and other pollutants.¹⁷ Using a process that considers air quality data and other factors, EPA designates areas as "nonattainment" if those areas cause or contribute to violations of a NAAQS. Reasonable further progress, as defined in section 171 of the CAA, is related to attainment and means "such annual incremental reductions in emissions of the relevant air pollutant . . . for the purpose of ensuring attainment of the applicable [NAAQS]."

¹⁶ See section 110(1) of the CAA.

¹⁷ The other pollutants are sulfur dioxide, carbon monoxide, lead, and PM₁₀.

RGGS is located in Clark County, Nevada. Portions of Clark County (the Las Vegas Valley) have previously been designated nonattainment for PM₁₀, carbon monoxide, and the 1997 8-hour ozone standard. Clark County is now in attainment with the NAAQS for carbon monoxide and ozone.¹⁸ RGGS is not located in the nonattainment areas for PM₁₀. The plans developed by Clark County, in part to satisfy a requirement for redesignation from nonattainment to attainment, and approved by EPA, do not rely on additional emission reductions of NO_x at RGGS to ensure continued attainment with the carbon monoxide or the 1997 8-hour ozone standards. Therefore, an 18-month extension, from January 1, 2015, to June 30, 2016, in the compliance date for RGGS to meet the BART limit for NO_x will not interfere with attainment or reasonable further progress for any air quality standard.

D. Compliance Date Extension Does Not Interfere with Any Other Applicable Requirement of the CAA

The other requirements of the CAA that are applicable to RGGS are the visibility protection requirements for class I

¹⁸ See: "Determination of Attainment for PM₁₀ for the Las Vegas Valley Nonattainment Area, NV," 75 FR 45485 (August 3, 2012); "Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Nevada; Redesignation of Las Vegas Valley to Attainment for the Carbon Monoxide Standard," 75 FR 59090 (September 27, 2010); and "Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Nevada; Redesignation of Clark County to Attainment for the 1997 8-Hour Ozone Standard," 78 FR 1149 (January 8, 2013).

Federal areas under section 169A, i.e., BART and a long-term strategy for making reasonable progress toward meeting the national goal of restoring visibility at class I Federal areas to natural conditions.¹⁹

The CAA requires that the procurement, installation, and operation of BART be as expeditious as practicable but in no event later than five years after the date of approval of a SIP or promulgation of a FIP.²⁰ Based on the information described in section II.B of this notice, EPA is proposing to determine that a date of June 30, 2016, to comply with the NO_x limits previously determined as BART for RGGS is as expeditious as practicable and within five years of the effective date of EPA's FIP for RGGS.²¹ Therefore, the 18-month extension we are proposing today will not interfere with the BART compliance requirement of the CAA.

Nevada's Regional Haze SIP included a long-term strategy for making reasonable progress toward restoring visibility at the Jarbidge Wilderness Area to natural conditions by 2064. The CAA defines long-term as 10 to 15 years and Nevada's long-term strategy, submitted to EPA in 2009, includes emission reductions

¹⁹ CAA section 169A(b)(2)(A) and (B).

²⁰ CAA sections 169A(b)(2)(A) and (g)(4).

²¹ The effective date of the final FIP is September 24, 2012. See 77 FR 50936 (August 23, 2012). Five years after the effective date is September 24, 2017.

and visibility improvements that are expected by 2018.²² Because the proposed compliance date of June 30, 2016, occurs within the period of the first long-term strategy, i.e., prior to 2018, the 18-month extension we are proposing will not interfere with the long-term strategy requirement of the CAA.

III. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review 13563

This action proposes to extend the compliance date for a single source. This type of action is exempt from review under Executive Orders (EO) 12866 (58 FR 51735, October 4, 1993) and EO 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). Because the proposed action merely extends a compliance date, it does not impose an information collection burden and the Paperwork Reduction Act does not apply.

C. Regulatory Flexibility Act

²² See CAA section 169A(b) (2) (B) and Section 7 of the Nevada Regional Haze SIP.

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed action on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. The owner of the affected units at Reid Gardner Generating Station, Nevada Energy, also known as Nevada Power Company, is not a small entity and the extended compliance date being proposed today reduces the burden on this

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entity in general. See *Mid-Tex Electric Cooperative, Inc. v. FERC*, 773 F.2d 327 (D.C. Cir. 1985). We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

This proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule merely proposes an 18-month extension of a compliance date. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

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This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule does not impose regulatory requirements on any government entity.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or in the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action proposes an 18-month extension of a compliance date. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13175 (65 FR 67249, November 9, 2000), EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal

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government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

EPA has concluded that this proposed rule may have tribal implications because the Reid Gardner Generating Station is located adjacent to reservation lands of the the Moapa Band of Paiute Indians. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law.

EPA consulted with tribal officials early in the process of developing regulations related to Reid Gardner Generating Station to permit them to have meaningful and timely input into its development. During the comment period for prior EPA actions related to the Nevada Regional Haze SIP and EPA's FIP for RGGS, the Moapa Band of Paiute Indians has raised concerns to EPA about the environmental impacts of this facility. For those previous rulemakings, EPA consulted the Moapa Band regarding these concerns and visited the reservation and the facility. Additional details of our consultation with the Moapa Band are provided in section IV.F of our final rulemaking published on August 23, 2012 (77 FR 50936). For this proposed action to extend the compliance date for NO_x at RGGS by 18 months, we will

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continue to consult with the Moapa Band as we proceed with this action.

EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This proposed action addresses regional haze and visibility protection.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is exempt under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. No. 104-113, 12 (10) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so

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would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by the VCS bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when the Agency decides not to use available and applicable VCS.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule, if finalized, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations

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because it does not affect the level of protection provided to human health or the environment. This proposed rule does not change any applicable emission limit for the Reid Gardner Generating Station. This proposed rule merely extends the compliance date for a single pollutant by 18 months.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Nitrogen Dioxide.

Authority: 42 U.S.C. 7401 *et seq.*

March 15, 2013 /s/

Dated: Bob Perciasepe,
Acting Administrator.

For the reasons stated in the preamble, Part 52, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 52 - [AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Part 52 is amended by revising §52.1488 Visibility protection, subparagraph (f)(3) Compliance date, to read as follows:

§52.1488 Visibility protection.

* * * * *

(f) * * *

(3) *Compliance date.* The owners and operators subject to this section shall comply with the emission limitations and other requirements of this section by June 30, 2016, and thereafter.

* * * * *